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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

STEPHEN MARTIN WHITFIELD, SR.,

Defendant and Appellant.

E049813

(Super.Ct.No. CR38041)

OPINION

APPEAL from the Superior Court of Riverside County. Edward D. Webster,
Judge. Affirmed.

Jeffrey S. Kross, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Defendant, Stephen Martin Whitfield, Sr., appeals from an order after judgment
denying his motion to modify his sentence by reducing the restitution fine.

BACKGROUND

Defendant was sentenced in 1991 to a term of 18 years to life following his convictions for second degree murder (Pen. Code, § 187) and driving under the influence of alcohol within seven years of having suffered three prior convictions for a similar offense (Veh. Code, § 23152, subds. (a), (b); § 23175.)¹ After his convictions were affirmed on appeal, defendant made a motion for modification of his sentence pursuant to Penal Code section 1260, on October 29, 2009. Specifically, defendant sought to reduce the amount of the restitution fine to \$210. The trial court denied the motion, and defendant appealed.

DISCUSSION

At his request, this court appointed counsel to represent defendant on appeal. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493] setting forth a statement of the case, and a summary of the facts, and requesting that we undertake an independent review of the entire record. We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error.

Penal Code section 1260 does not authorize a motion to modify a felony sentence in the trial court. It simply describes the potential rulings that a court of appeals may

¹ We obtained additional information about the convictions and sentence from defendant's prior appeal. (*People v. Whitfield* (1994) 7 Cal.4th 437, 442, 445.)

make on appeal. After 120 days has passed from pronouncement of sentence, a trial court lacks jurisdiction to modify a sentence. (*People v. Chlad* (1992) 6 Cal.App.4th 1719, 1724-1725.)

As defendant acknowledged in his motion, a restitution fine is mandatory and the court “shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant’s inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine.” (Pen. Code, § 1202.4, subd. (c).) The usual calculation of the restitution fine is determined by multiplying the minimum restitution fine of \$200 by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted, not to exceed \$10,000. (§ 1202.4, subds. (b)(1), (2).)

A defendant may not contest the amount, specificity, or propriety of an authorized order of a restitution fine for the first time on appeal (*People v. Crittle* (2007) 154 Cal.App.4th 368, 371; *People v. Gibson* (1994) 27 Cal.App.4th 1466, 1468-1469), let alone in a motion to modify the same in the trial court after it has lost jurisdiction. (*People v. Turrin* (2009) 176 Cal.App.4th 1200, 1207.) Defendant is contesting the amount and propriety of an authorized order of a restitution fine.

The restitution fine imposed here was proper.

We have completed our independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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s/Ramirez
P.J.

We concur:

s/McKinster
J.

s/Miller
J.